



DEPARTMENT OF COMMERCE

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International Trade Administration

[Application No. 12-00005]

Export Trade Certificate Of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review to Colombia Rice Export Quota, Inc. (“COL-RICE”) (Application #12-00005).

SUMMARY: On August 28, 2012, the U.S. Department of Commerce issued an Export Trade Certificate of Review to Colombia Rice Export Quota, Inc. (“COL-RICE”). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2010). The U.S. Department of Commerce, International Trade Administration, Office of Competition and Economic Analysis (“OCEA”) is issuing this notice pursuant to 15 CFR § 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the

Federal Register. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR § 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Members (within the meaning of 15 C.F.R. 325.2(l))

COL-RICE's members under this certificate are: the Arkansas Rice Research and Promotion Board, the California Rice Research Board, the Louisiana Rice Research Board, the Mississippi Rice Promotion Board, the Missouri Rice Research and Merchandising Council, the Texas Rice Producers' Board, the USA Rice Merchants' Association, the USA Rice Millers' Association, and, Federación Nacional de Arroceros de Colombia (FEDEARROZ).

Description of Certified Conduct

COL-RICE is certified to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

Export Trade

COL-RICE plans to export rice products as described in the Agricultural Tariff Schedule of the Republic of Colombia, as appended to the United States - Colombia Trade Promotion Agreement (TPA), and including the following Colombian HTS Codes: 1006.1090—rice in hull, except for seed (*arroz con cascara, except para siembra*); 1006.2000—hulled rice, rough rice or brown rice

(*arroz descascarillado, arroz cargo o arroz pardo*); 1006.3000—rice semi-milled or milled, whether polished or glazed (*arroz semiblanqueado o blanqueado, incluso pulido o glaseado*); 1006.4000—broken rice (*arroz partido*).

Export Market

The Republic of Colombia.

Export Trade Activities and Methods of Operation

With respect to the conduct of Export Trade in the Export Market, COL-RICE may, subject to the terms and conditions set forth below, engage in the following Export Trade Activities and Methods of Operation:

1. *Purpose:* COL-RICE will manage on an open tender basis the tariff-rate quotas (TRQs) for rice products granted by the Republic of Colombia to the United States under the terms of the TPA or any amended or successor agreement providing for Colombian TRQs for rice from the United States.

Specifically, the TRQs for rice products are set forth at Paragraph 20 of Appendix I of the General Notes of Colombia, Annex 2.3 to the TPA. COL-RICE also will provide for distributions of the proceeds received from the tender process based on exports of rice products to support the operation and administration of COL-RICE and to fund research projects for the benefit of the rice industry of the United States and to fund market development and/or competitiveness projects for the benefit of the rice production sector of the Republic of Colombia, as established by paragraph 6 of Article 5 of Decree No. 0728 of 2012, issued by the Ministry of Agriculture and Rural Development of Colombia.

2. *Administrator.* COL-RICE shall contract with a neutral third party Administrator who shall administer the TRQ System, subject to general supervision and oversight by the Board of Directors of COL-RICE.
3. *Open Tender Process.* COL-RICE shall offer TRQ Certificates for duty-free shipments of rice to the Republic of Colombia solely and exclusively through an open tender process with certificates (“TRQ Certificates”) awarded to the highest bidders. COL-RICE shall hold tenders in accordance with established tranches at least once each year. The award of TRQ Certificates under the open tender process shall be determined solely and independently by the Administrator without any participation by the members of COL-RICE or the COL-RICE Board of Directors.

4. *Persons or Entities Eligible to Bid.* Any person or entity incorporated or with a legal address in the United States of America shall be eligible to bid in the open tender process.
5. *Notice.* The Administrator shall publish notice (“Notice”) of each open tender process to be held to award TRQ Certificates in the *Journal of Commerce* and, at the discretion of the Administrator, in other publications of general circulation within the U.S. rice industry or in the Republic of Colombia. The Notice will invite independent bids and will specify (i) the total amount (in metric tons) that will be allocated pursuant to the applicable tender; (ii) the shipment period for which the TRQ Certificates will be valid; (iii) the date and time by which all bids must be received by the Administrator in order to be considered (the “Bid Date”); and (iv) a minimum bid amount per ton, as established by the Board of Directors, to ensure the costs of administering the auction are recovered. The Notice normally will be published not later than 30 calendar days prior to the first day of the auction process and will specify the Bid Date. The Notice will specify the format for bid submissions. Bids must be received by the Administrator not later than 5:00 p.m. EST on the Bid Date.

6. *Contents of Bid.* The bid shall be in a format established by the Administrator and shall state (i) the name, address, telephone and facsimile numbers, and email address of the bidder; (ii) the quantity of rice bid, in an amount stated in metric tons or fractions thereof; (iii) the bid price in U.S. dollars per metric ton; and (iv) the total value of the bid. The bid form shall contain a provision that must be signed by the bidder, agreeing that (i) any dispute that may arise relating to the bidding process or to the award of TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules; and (ii) judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

7. *Performance Security.* The bidder shall submit with each bid a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier's check, wire transfer or equivalent security, in a form approved and for the benefit of an account designated by the Administrator, in the amount of \$50,000 or the total value of the bid, whichever is less. The bidder shall forfeit such performance security if the bidder fails to pay for any TRQ Certificates awarded within five (5) business days of being notified of a TRQ award. The bidder may choose to apply the performance security to the price of any successful bid. Promptly after the close of the open tender process, the Administrator shall return any unused or non-forfeited security to the bidder.

8. *Confidentiality of Bids.* The Administrator shall treat all bids and their contents as confidential. The Administrator shall disclose information about bids only to another neutral third party, or authorized government official of the United States or of the Republic of Colombia and only as necessary to ensure the effective operation of the TRQ System or where required by law. However, after the issuance of all TRQ Certificates from an open tender process, the Administrator shall notify all bidders and shall disclose publicly (i) the total tonnage for which TRQ Certificates were awarded, and (ii) the average price and lowest price per metric ton of all successful bids.
9. *Award of TRQ Certificates.* The Administrator shall award TRQ Certificates for the available tonnage to the bidders who have submitted the highest price conforming bids. If two or more bidders have submitted bids with identical prices, the Administrator shall divide the remaining available tonnage in proportion to the quantities of their bids, and offer each TRQ Certificates in the resulting tonnages. If any bidder declines all or part of the tonnage offered, the Administrator shall offer that tonnage first to the other tying bidders, and then to the next highest bidder.
10. *Payment for TRQ Certificates.* Promptly after being notified of a TRQ award and within the time specified in the Notice, the bidder shall pay the full amount of the

bid, either by wire transfer or by certified check, to an account designated by the Administrator. If the bidder fails to make payment within five (5) days, the Administrator shall revoke the award and award the tonnage to the next highest bidder(s).

11. *Delivery of TRQ Certificates.* The Administrator shall establish an account for each successful bidder in the amount of tonnage available for TRQ Certificates. Upon request, the Administrator will issue TRQ Certificates in the tonnage designated by the bidder, consistent with the balance in that account. The TRQ Certificate shall state the delivery period for which it is valid.

12. *Transferability.* TRQ Certificates shall be freely transferable except that (i) any TRQ Certificate holder that intends to sell, transfer or assign any rights under that Certificate shall publish such intention on an internet site maintained by the Administrator at least three (3) business days prior to any sale, transfer or assignment; and (ii) any TRQ holder who sells, transfers or assigns its rights under a TRQ Certificate shall provide the Administrator with notice and a copy of the sale, transfer or assignment within three (3) business days.

13. *Deposit of Proceeds*: The Administrator shall cause all proceeds of the open tender process to be deposited in an interest-bearing account in a financial institution approved by the COL-RICE Board of Directors.

14. *Disposition of Proceeds*. The proceeds of the open tender process shall be applied and distributed as follows:

- i. The Administrator shall pay from tender proceeds, as they become available, all operating expenses of COL-RICE, including legal, accounting and administrative costs of establishing and operating the TRQ System, as authorized by the Board of Directors.
- ii. The legal, accounting, and administrative expenses of the USA Rice Federation, the U.S. Rice Producers Association, and Federación Nacional de Arroceros de Colombia (FEDEARROZ) directly related to establishing COL-RICE shall be reimbursed from the proceeds of COL-RICE as such proceeds become available, subject to review by the COL-RICE Board.
- iii. Of the proceeds remaining at the end of each year of operations after all costs described in (i) and (ii) have been paid—

1. In years one (1) through ten (10), fifty percent (50%) shall be distributed to each of the six (6) state chartered rice research boards named as members above on a pro rata basis, that share being each state's pro rata share of the average of the immediately preceding three (3) years U.S. rice production, to fund rice research projects as defined by each of the six (6) state chartered research boards to benefit the United States rice industry. The funds are to be used for direct research projects and not to be used for general administrative purposes.
2. In years eleven (11) through eighteen (18), fifty percent (50%) shall be distributed to each of the six (6) state chartered rice research boards named as members above on a pro rata basis, that share being each state's pro rata share of the average of the immediately preceding three (3) years U.S. rice production, to fund research and promotion projects as defined by each of the six (6) state chartered research boards to benefit the United States rice industry as may be within the purview of each board. These funds are to be used for direct projects and are not to be used for general administrative purposes.

3. Fifty percent (50%) shall be distributed to FEDEARROZ to fund market development and/or competitiveness projects for the benefit of the rice production sector of the Republic of Colombia, as established by paragraph 6 of Article 5 of Decree No. 0728 of 2012, issued by the Ministry of Agriculture and Rural Development of Colombia.

15. *Arbitration of Disputes.* Any dispute, controversy or claim arising out of or relating to the TRQ System or the breach thereof, including inter alia, a Member's qualification for distribution, interpretation of documents, or of the distribution itself, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

16. *Confidential Information.* The Administrator shall maintain as confidential all export documentation or other business sensitive information submitted in connection with application for COL-RICE membership, bidding in the open tender process, or requests for distribution of proceeds, where such documents or information has been marked "Confidential" by the person making the submission.

The Administrator shall disclose such information only to another neutral third party or authorized government official of the United States or of the Republic of Colombia and only as necessary to ensure the effective operation of the TRQ System or where required by law (including appropriate disclosure in connection with the arbitration of a dispute).

17. *Annual Reports.* COL-RICE shall publish an annual report including a statement of its operating expenses and data on the distribution of proceeds, as reflected in the audited financial statement of COL-RICE.

Terms and Conditions

In engaging in Export Trade Activities and Methods of Operation,

1. Except as authorized in Paragraph 15 of the Export Trade Activities and Methods of Operation, neither COL-RICE, the Administrator, any Member, nor any neutral third party shall intentionally disclose, directly or indirectly, to any Member (including parent companies, subsidiaries, or other entities related to any Member) any information regarding any other Member's or bidder's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. COL-RICE will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.
3. COL-RICE will ensure that the Administrator holds an auction at least once a year. Failure to so hold an auction may result in revocation of the certificate.

Definitions

“Neutral third party”, as used in this Certificate of Review, means a party not otherwise associated with COL-RICE or any Member and who is not engaged in the production, sale, distribution or export of rice products.

Date: __September 18, 2012_____

Joseph E. Flynn, Director
Office of Competition and
Economic Analysis

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